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In the Matter of

Distribution of 1998 and 1999
Cable Royalty Funds

GENERAL COUNSEL
OF COPYRIGHT

Docket No. 2001-8 CARP CD 98-99

**PROGRAM SUPPLIERS' OBJECTIONS TO
DIRECT CASE OF CANADIAN CLAIMANTS**

Pursuant to Section 251.45(b) of the Copyright Arbitration Royalty Panel Rules and Procedures ("CARP Rules") and the Scheduling Order dated October 28, 2002, as amended by the Copyright Office Order dated December 23, 2002, Program Suppliers hereby file their objections to the Direct Case of the Canadian Claimants ("Canadian Claimants"). Program Suppliers seek to compel production of documents that underlie the testimony of Canadian Claimants, but which Canadian Claimants have not produced.

Program Suppliers rely on well-established principles for this Motion. Section 251.45(c)(1) of the CARP Rules provides in relevant part that "parties may request of an opposing party nonprivileged underlying documents related to written exhibits and testimony." The parties' obligations under this rule are articulated further in the Librarian's Order of October 30, 1995:

1. *Limited scope of discovery.* Discovery in CARP proceedings is intended to produce only the documents that underlie the witness' factual assertions. It is not intended to augment the record with what the witness might have said or put forward, or to range beyond what the witness said. Any augmentation of the record is the prerogative of the arbitrators, not the parties.

For example, articles mentioned in a resume are not discoverable to test whether a witness is being consistent. They are only offered to support the witness' knowledge and experience. Whereas, articles cited within the body of the testimony are discoverable to see whether they, in fact, support the methods being used.

2. *Bottom-line figures must be verified.* Parties who offer bottom-line figures in a CARP proceeding must be prepared to share all the underlying data that contributed to those bottom-line figures, notwithstanding the problems of confidentiality. Each of the data inputs in a survey or study could contain errors or be the source of undercounting for one or more of the Phase I parties, and therefore, they are all important to the process of verification.

Therefore, in a number of rulings, the Office has directed the parties to negotiate in good faith protective orders so that the underlying data can be revealed and confidentiality can be protected.

3. *Underlying data must be furnished in as organized and usable a form as possible.* CARP proceedings operate under tight deadlines. For the proceeding to run smoothly and quickly, all parties must be prepared to furnish to their opposing sides the underlying documents in as organized and usable a form as possible, namely, in computer tapes or discs even when the hard copy has been furnished.

In the Matter of 1990-92 Cable Copyright Royalty Distribution Proceeding, Docket No. 94-3 CARP CD 90-92, at 1-2 (footnote omitted). Program Suppliers sought documents underlying specific factual assertions in Canadian Claimants' testimony. However, in violation of these principles, Canadian Claimants either failed to provide the requested underlying

documents or produced only partially responsive documents. Program Suppliers request that Canadian Claimants be compelled to produce the requested documents.

1. Documents Related to the Testimony of Debra J. Ringold

a. In response to Program Suppliers' request for documents underlying the testimony of Debra J. Ringold, Canadian Claimants produced Distant Signal Questionnaires. Within the Distant Signal Questionnaires were references to "Signal A List," "Signal B List," and "Signal C List." Consequently, Program Suppliers requested in its follow-up discovery request 48 that the Canadians provide copies of the Signal A, Signal B and Signal C lists. The Canadians responded:

The list of signals were derived from the list previously produced and yearly cable carriage reports which have been discarded. The actual signal carriage for A, B and C was confirmed through the screening survey. Production of the screening survey will require extensive and timely redaction of identifying information. However, we would be willing to provide a random selected sample of five redacted screening surveys for each year.

The Canadians actually produced thirty-eight (38) redacted screening surveys which Program Suppliers assume are only a portion of the screening surveys. The resulting effect is that critical documents that underlie several significant assertions in Ms. Ringold's testimony have been discarded. Canadian Claimants have produced, only partially, additional underlying documents that would aid in examining the veracity of Ms. Ringold's assertions.

Program Suppliers respectfully request that the Librarian compel the Canadians to make reasonable arrangements for inspection of all screening surveys. Because the screening surveys exist and they are documents that underlie factual assertions in Ms. Ringold's study, Program Suppliers are entitled to inspect the documents. Programs Suppliers should have the opportunity to examine the screening surveys in conjunction with the Distant Signal Questionnaires to verify,

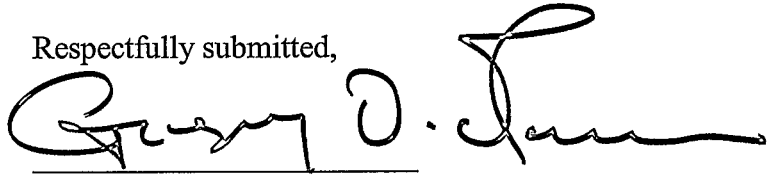
among other things, the accuracy of the survey with respect to signal carriage and with respect to related assertions in Ms. Ringold's testimony. In light of the Canadian Claimants' concerns regarding the time and effort required for redaction of the surveys, Program Suppliers respectfully request that the Librarian compel the Canadians to make all of the screening surveys available for inspection no less than 45 days before the scheduled hearing date for the direct case.

b. In Appendix 3 of Ms. Ringold's testimony, where she describes her survey methodology, she references notification letters sent to the various survey respondents. The notification letters were purportedly sent to television station managers for the purpose of notifying them that they would receive phone calls from a telemarketing company asking them to participate in the Distant Signal survey. During discovery, Program Suppliers requested copies of these notification letters. Canadian Claimants objected to production of the actual notification letters claiming that "each is identical except for the identifying information which would be redacted."

There is no question that the notification letters exist and that they are documents that underlie factual assertions in Ms. Ringold's study. While it may be true that the notification letters are identical with respect to the non-redacted information, it is equally true that Program Suppliers are entitled to independently examine the notification letters and draw

their own conclusions. Accordingly, Program Suppliers respectfully request that the Librarian compel production of each redacted notification letter. Finally, Program Suppliers reserve to right to seek additional remedies as appropriate after having an opportunity to review the requested documents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory O. Olaniran", written over a horizontal line.

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January 10, 2003

CERTIFICATE OF SERVICE

I, Gregory O. Olaniran, hereby certify that I have, this 10th day of January, 2003, served a copy of the foregoing document in Docket No. 2001-8 CARP CD 98-99, on the parties listed below, as indicated:

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A large, stylized handwritten signature in black ink, appearing to read 'Gregory O. Olaniran', is written over a horizontal line.

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